

1 Richard Mulloy (SBN 199278)
richard.mulloy@dlapiper.com
2 Jacob Anderson (SBN 265768)
jacob.anderson@dlapiper.com
3 **DLA PIPER LLP (US)**
401 B Street, Suite 1700
4 San Diego, California 92101-4297
Tel: 619.699.2700
5 Fax: 619.699.2701

6 Brent O. Hatch (*pro hac vice* to be filed)
bhatch@hjdllaw.com
7 Lara A. Swensen (*pro hac vice* to be filed)
lswensen@hjdllaw.com
8 **HATCH, JAMES, & DODGE, P.C.**
10 West Broadway, Suite 400
9 Salt Lake City, Utah 84101
Tel: 801.363.6363
10 Fax: 801.363.6666

11 Attorneys for Plaintiffs
PureCircle USA Inc. and PureCircle Sdn Bhd

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **SOUTHERN DIVISION**

15 PURECIRCLE USA INC. and
16 PURECIRCLE SDN BHD,

17 Plaintiffs,

18 v.

19 SWEEGEN, INC. and PHYTO TECH
20 CORP. d/b/a BLUE CALIFORNIA,

21 Defendants.

CASE NO. 8:18-CV-1679

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

22 Plaintiffs PureCircle USA Inc. and PureCircle Sdn Bhd (collectively,
23 “PureCircle”), by and through the undersigned counsel, file this Complaint for
24 Patent Infringement relating to U.S. Patent No. 9,243,273 (“the Patent-in-Suit”)
25 against Defendants SweeGen, Inc. (“SweeGen”) and Phyto Tech Corp. d/b/a Blue
26 California (“Blue California” and, together with SweeGen, “Defendants”), and
27 allege as follows:

28 /////

1 **NATURE OF ACTION**

2 1. This is an action for patent infringement arising under the patent laws
3 of the United States, 35 U.S.C. § 1 *et seq.*, specifically including 35 U.S.C. § 271.

4 **THE PARTIES**

5 2. Plaintiff PureCircle USA Inc. is a Delaware corporation with its
6 principal place of business at 200 W. Jackson Blvd., 8th Floor, Chicago, Illinois
7 60606. PureCircle USA Inc. is a subsidiary of PureCircle Limited.

8 3. Plaintiff PureCircle Sdn Bhd is a Malaysian corporation with its principal
9 place of business at Level 12, West Wing, Rohas PureCircle, No. 9 Jalan P. Ramlee,
10 50250 Kuala Lumpur, Malaysia. PureCircle Sdn Bhd is a subsidiary of PureCircle
11 Limited.

12 4. On information and belief, SweeGen, Inc. is a corporation organized
13 under the laws of the state of Nevada with its principal place of business at 30321
14 Esperanza Avenue, Rancho Santa Margarita, California, 92688.

15 5. On information and belief, Phyto Tech Corp. d/b/a Blue California is a
16 corporation organized under the laws of the state of California with its principal
17 place of business at 3011 Tomas, Rancho Santa Margarita, California, 92688.

18 **JURISDICTION AND VENUE**

19 6. PureCircle's claims for patent infringement arise under the patent laws
20 of the United States, 35 U.S.C. §§ 101 *et seq.*, including 35 U.S.C. §§ 271 and 281-
21 285.

22 7. This Court has subject matter jurisdiction over PureCircle's claims for
23 patent infringement pursuant to the laws of the United States, 28 U.S.C. §§ 1331 and
24 1338.

25 8. On information and belief, Defendants transact and conduct business in
26 this District and the State of California, and are subject to the personal jurisdiction
27 of this Court.

28 9. On information and belief, SweeGen has minimum contacts within the

1 State of California and this District and has purposefully availed itself of the
2 privileges of conducting business in the State of California and in this District by,
3 *inter alia*, maintaining its principal place of business in this District, in Rancho
4 Santa Margarita, California.

5 10. On information and belief, Blue California has minimum contacts
6 within the State of California and this District and has purposefully availed itself of
7 the privileges of conducting business in the State of California and in this District
8 by, *inter alia*, maintaining its principal place of business in this District, in Rancho
9 Santa Margarita, California.

10 11. PureCircle's causes of action arise directly from Defendants' business
11 contacts and other activities in the State of California and in this District.

12 12. On information and belief, Defendants have committed acts of
13 infringement, both directly and indirectly, within this District and the State of
14 California by, *inter alia*, making, using, selling, offering for sale, importing,
15 advertising, and/or promoting products in this District that infringe one or more
16 claims of the Patent-in-Suit.

17 13. More specifically, Defendants, directly and/or through intermediaries,
18 use, sell, ship, distribute, offer for sale, advertise, and otherwise promote their
19 products in the United States, the State of California, and this District.

20 14. On information and belief, Defendants solicit customers in the State of
21 California and this District, and have customers who are residents of the State of
22 California and this District and who use Defendants' products in the State of
23 California and in this District.

24 15. On information and belief, each of the Defendants has a regular and
25 established place of business in this District.

26 16. On information and belief, SweeGen's principal place of business is
27 located in this District at 30321 Esperanza Avenue, Rancho Santa Margarita,
28 California, 92688.

1 large-scale high-purity stevia ingredient production and commercialization.

2 26. PureCircle products are derived from the stevia plant, which contains
3 over 40 naturally occurring molecules known as steviol glycosides that can be
4 extracted for use in sweeteners and as flavor modifiers.

5 27. The success of PureCircle Limited and its subsidiaries is the result of
6 innovation at every stage of the supply chain, from developing high-yield varieties
7 of the stevia plant to developing sophisticated processes to extract and modify the
8 steviol glycosides for specific food and beverage applications.

9 28. PureCircle Limited and its subsidiaries work with leading companies in
10 the food and beverage industries to investigate new stevia-derived ingredients for
11 application in food and beverage products. In addition, PureCircle founded the
12 Global Stevia Institute, now known as the PureCircle Stevia Institute (“PCSI”), an
13 organization that is based in the United States and run by Dr. Priscila Samuel,
14 PureCircle’s Director of PCSI and Scientific and Regulatory Affairs. The
15 PureCircle Stevia Institute provides science-based information about stevia, serving
16 as an educational resource for health professionals, manufacturers and the general
17 public.

18 29. In 2008, as a result of the efforts of PureCircle Limited, Rebaudioside
19 A (“Reb A”), a high-purity stevia ingredient, was approved as a food ingredient by
20 the U.S. Food and Drug Administration (“FDA”) and by the World Health
21 Organization. The market has continued to open since that time, with regulatory
22 approvals having been obtained in the European Union, Australia, New Zealand,
23 Canada, Turkey, Russia, South Africa, Pakistan, India, Brazil, and many other
24 countries. More than 5 billion consumers now live in markets where stevia-derived
25 ingredients have been approved as a food and beverage ingredient.

26 30. In 2013, as a result of the efforts of PureCircle USA Inc., the FDA
27 issued Generally Recognized as Safe (“GRAS”) No Objection Letters for the use of
28 PureCircle Rebaudioside D (“Reb D”) and Rebaudioside M (“Reb M”) as general-

1 purpose sweeteners in 2014 for food and beverages.

2 31. PureCircle protected its innovative processes and compositions by,
3 among other things, filing and procuring patents. PureCircle currently owns or co-
4 owns 77 U.S. patents, including the Patent-in-Suit. The company's portfolio
5 includes 91 commercial stevia-derived ingredients and 304 custom stevia-derived
6 ingredients. The custom ingredients can be combined to optimize processing, flavor
7 and other qualities in particular products.

8 32. On information and belief, Defendants developed products that
9 incorporate, without license, technologies protected by the Patent-in-Suit.

10 33. On February 21, 2017, SweeGen announced the commercialization of
11 its "Bestevia" Rebaudioside M with a major global beverage company. SweeGen
12 described the process for making Bestevia as a "proprietary and patent-pending
13 bioconversion" and also as an "enzymatic conversion."

14 34. According to SweeGen's website,
15 <http://www.sweetgen.com/technology/>, SweeGen has an "exclusive license
16 agreement in the sweetener space with R&D powerhouse CONAGEN." According
17 to the SweeGen website, <http://www.sweetgen.com/technology/#proprietary>,
18 SweeGen's proprietary process for making Rebaudioside M is licensed from
19 Conagen Inc. ("Conagen"), in an exclusive-license arrangement.

20 35. On information and belief, Conagen is the named assignee of U.S.
21 Patent No. 10,023,604 ("the '604 patent"), entitled "Non-caloric sweeteners and
22 methods for synthesizing," which claims "[a] method of producing synthetic
23 rebaudioside M, the method comprising: incubating an in vitro reaction mixture
24 comprising rebaudioside D, uridine diphosphate-glucose (UDP-glucose), and a
25 UGT76G1 UDP-glycosyltransferase-sucrose synthase fusion enzyme comprising the
26 amino acid sequence of SEQ ID NO: 9 for a sufficient time to completely convert the
27 rebaudioside D to synthetic rebaudioside M." The '604 patent issued on July 17,
28 2018.

36. On information and belief, the proprietary process that SweeGen refers to on its website for making its Bestevia product and any other Rebaudioside M products, and for which it has an exclusive license from Conagen, is the process described in claim 1 of the '604 patent.

37. The method claimed in the '604 patent practices the inventions claimed in the Patent-in-Suit.

38. On August 9, 2016, Defendant Blue California submitted a petition to the FDA seeking a GRAS No Objection Letter for its Rebaudioside M, assigned GRAS Notice (GRN) No. 667. The petition stated that two UGT enzymes from certain yeast strains “carry out multiple steps of glucose addition to naturally occurring steviol glycosides, eventually converting them to Reb M.” Blue California represented in the petition that it “uses” the process described in the petition “to manufacture high purity rebaudioside M.” On March 2, 2017, SweetGen announced that the FDA had issued a GRAS No Objection Letter for Bestevia.

39. According to Blue California's GRAS Notice (GRN) No. 667, its Bestevia product contains Rebaudioside M at a purity of greater than 95%.

40. According to Blue California’s GRAS Notice (GRN) No. 667, SweeGen completely converts Rebaudioside D to Rebaudioside M. On information and belief, Defendants’ products using this process infringe the Patent-in-Suit.

41. In order to protect its substantial investments in research and development, it has become necessary for PureCircle to defend against this unlawful use of its patented technology by Defendants.

COUNT I

Defendants' Infringement of the Patent-in-Suit

42. PureCircle repeats and realleges paragraphs 1-41 above as if fully set forth herein.

43. On information and belief, Defendants are making, using, offering to sell, selling and/or importing into the United States products that infringe at least

claims 1-14 of the Patent-in-Suit, including but not limited to “Bestevia” Rebaudioside M.

44. On information and belief, “Bestevia” Rebaudioside M (also known as Rebaudioside X) is made by converting Rebaudioside D to Rebaudioside X using a UDP-glucosyltransferase.

45. On information and belief, the conversion of Rebaudioside D to Rebaudioside X during the making of “Bestevia” Rebaudioside M is at least about 50% complete.

46. The following chart compares exemplary claim 1 to SweeGen’s process for making Rebaudioside M, based on the ’604 patent process and GRAS Notice (GRN) No. 667:

CLAIM 1	SWEEGEN PROCESS FOR BESTEVIA
A method for making Rebaudioside X comprising	Bestevia contains greater than 95% Rebaudioside M. Rebaudioside X and Rebaudioside M are synonyms. The ’604 patent states: “[a] method of producing synthetic rebaudioside M, the method comprising:”
a step of converting Rebaudioside D to Rebaudioside X	The ’604 patent states: “incubating an in vitro reaction mixture comprising rebaudioside D ... for a sufficient time to completely convert the rebaudioside D to synthetic rebaudioside M.”
using a UDP-glucosyltransferase,	The ’604 patent states: “incubating an in vitro reaction mixture comprising ... a UGT76G1 UDP-glycosyltransferase-sucrose synthase fusion enzyme” GRAS Notice (GRN) No. 667 states that SweeGen “uses ... to manufacture ... rebaudioside M (Reb-M 95%) ... uridine 5'-diphospho-glucoronsyltransferase (UGT) enzymes”
wherein the conversion of Rebaudioside D to Rebaudioside X is at least about	The ’604 patent states: “... for a sufficient time to completely convert the

CLAIM 1	SWEEGEN PROCESS FOR BESTEVIA
50% complete.	rebaudioside D to synthetic rebaudioside M.” GRAS Notice (GRN) No. 667 includes chromatograms showing that all of the Rebaudioside D has been converted to Rebaudioside M, with no traces of Rebaudioside D visible in the chromatogram.

47. On information and belief, Defendants have induced and will continue to induce the infringement of one or more claims of the Patent-in-Suit, in violation of 35 U.S.C. § 271(b), by, among other things, actively and knowingly aiding and abetting others (such as their customers who incorporate “Bestevia” Rebaudioside M into products) to infringe the Patent-in-Suit with the specific intent to encourage their infringement, through activities such as marketing Defendants’ products and working with customers to incorporate “Bestevia” Rebaudioside M into products.

48. On information and belief, the Defendants contribute to the infringement of one or more claims of the Patent-in-Suit, in violation of 35 U.S.C. § 271(c), by, among others, customers who incorporate “Bestevia” Rebaudioside M into products, because Defendants know that “Bestevia” Rebaudioside M embodies a material part of the claimed inventions of the Patent-in-Suit, that they are specially made or specially adapted for use in an infringement of the claims, and that they are not staple articles of commerce suitable for substantial non-infringing use.

49. On information and belief, Defendants are making, using, offering to sell, selling and/or importing into the United States products, including but not limited to “Bestevia” Rebaudioside M, that are made using the process recited in at least claims 1-14 of the Patent-in-Suit, in violation of 35 U.S.C. § 271(g).

50. PureCircle has been damaged by Defendants’ infringement and has suffered and will continue to suffer irreparable injury for which there is no adequate

1 remedy at law, unless Defendants are enjoined by this Court.

2 **COUNT II**

3 **Defendants' Willful Infringement of the Patent-in-Suit**

4 51. PureCircle repeats and realleges paragraphs 1-50 above as if fully set
5 forth herein.

6 52. On information and belief, Defendants' past and continuing
7 infringement has been deliberate and willful. This case is therefore an exceptional
8 case, which warrants an award of treble damages and attorneys' fees to PureCircle
9 pursuant to 35 U.S.C. § 285.

10 53. In Blue California's GRAS Notice (GRN) No. 677, Blue California
11 states, in justifying the safety of its manufacturing process:

12 Manufacturing processes for stevia-derived sweeteners
13 have been described in the published scientific and patent
literature. These processes are summarized below.

14 ...

15 More recently, novel process for conversion of steviol
16 glycosides have been described in the scientific literature.
The use of uridine 5'-diphospho-glucuronosyltransferase
17 (UGT) enzymes from the Saccharomycetaceae family
have been used in a variety of process to chemically
18 incorporate glucose molecules into a variety of substances.

19 54. On information and belief, the only prior patent literature describing
20 how to make Rebaudioside M using UGT enzymes is the Patent-in-Suit.

21 55. In prosecuting its own '604 patent, Conagen, from whom SweeGen
22 licensed its patents, provided the PCT version of the Patent-in-Suit—
23 WO2013/176738—to the Patent Office. On information and belief, SweeGen's
24 officers, including CEO Steven Chen and Director Xiaodan Yu, were or are also
25 officers of Conagen. Xiaodan Yu is also a named inventor on the '604 patent.

26 56. Thus, on information and belief, through either Mr. Chen or Mr. Yu, in
27 their roles as officers of Conagen or as a named inventor of the '604 patent, knew of
28 the Patent-in-Suit through the prosecution of the '604 patent.

1 57. On information and belief, through their roles as officers of SweeGen,
2 either Mr. Chen or Mr. Yu brought their knowledge of the Patent-in-Suit to
3 SweeGen.

4 58. On information and belief, Conagen is owned by SweeGen's majority
5 shareholder.

6 59. On information and belief, Blue California is an affiliate of SweeGen.
7 On information and belief, Blue California is controlled by SweeGen's majority
8 shareholder.

9 60. On information and belief, after receiving actual knowledge of the
10 Patent-in-Suit, Defendants have continued to make, use, sell, offer for sale, and/or
11 import infringing products into the United States despite knowing that there was an
12 objectively high likelihood of infringement of the Patent-in-Suit.

13 61. On information and belief, to the extent Defendants did not know of the
14 objectively high likelihood of infringement, it was so obvious that it should have
15 been known to Defendants.

16 62. At a minimum, Defendants had actual knowledge of the Patent-in-Suit
17 since at least as of the date they were served with this Complaint, and at least since
18 that date have had actual knowledge that one or more of their products infringes one
19 or more claims of the Patent-in-Suit.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, PureCircle demands judgment against Defendants:

22 A. Entering judging declaration that Defendants have, directly and/or
23 indirectly, infringed the Patent-in-Suit in violation of 35 U.S.C. § 271;

24 B. Issuing a permanent injunction enjoining Defendants and their agents,
25 attorneys, servants, successor, assigns, employees and any and all parties acting in
26 concert with any of them from directly and/or indirectly infringing in any manner
27 the Patent-in-Suit;

28 C. Ordering that PureCircle be awarded damages in an amount to be

1 determined at trial, to compensate PureCircle for the infringement of the Patent-in-
2 Suit under 35 U.S.C. § 284, together with costs and pre-judgment and post-judgment
3 interest;

4 D. Entering judgement declaring that Defendants' conduct was willful and
5 awarding PureCircle treble or other enhanced damages pursuant to 35 U.S.C. § 284;

6 E. Declaring that this case is exceptional, and awarding PureCircle its
7 reasonable attorneys' fees and expenses against Defendants pursuant to 35 U.S.C.
8 § 285;

9 F. Awarding PureCircle other fees, costs, and/or expenses and such other
10 relief as this Court may determine to be just and equitable.

11 **JURY DEMAND**

12 PureCircle demands a trial by jury on all matters alleged herein in accordance
13 with the Seventh Amendment to the U.S. Constitution and Rule 38(b) of the Federal
14 Rules of Civil Procedure.

15 Dated: September 17, 2018

16 DLA PIPER LLP (US)

17
18
19 By: /s/ Richard Mulloy

20 Richard Mulloy (SBN 199278)
21 richard.mulloy@dlapiper.com
22 Jacob Anderson (SBN 265768)
jacob.anderson@dlapiper.com

23 HATCH, JAMES & DODGE
24 Brent O. Hatch (*pro hac vice to be filed*)
25 Lara A. Swensen (*pro hac vice to be filed*)

26 Attorneys for Plaintiffs
27 PURECIRCLE USA INC. and
28 PURECIRCLE SDN BHD